

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TRAVIS WAYNE BENTLEY,)
)
 Petitioner,)
)
 vs.) No. CIV-22-160-C
)
)
KAMERON HARVONEK,)
)
)
 Respondent.)

ORDER

Petitioner filed the present action pursuant to 28 U.S.C. § 2254. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Gary M. Purcell. Judge Purcell entered a Supplemental Report and Recommendation (“R&R”) on March 30, 2022, recommending Petitioner’s third ground for relief be denied. Petitioner did not object to the Supplemental R&R and on May 3, 2022, the Court adopted it.

Petitioner has now filed a document entitled “Motion to Revisit and Readdress the Report and Recommendation.” Therein Petitioner requests the Court to reconsider the Supplemental R&R asserting he did not know he was required to Object. Petitioner notes that his brief was lengthy and appears to be concerned that Judge Purcell did not consider all 87 pages. Petitioner does not offer any argument or authority demonstrating error in Judge Purcell’s reasoning when recommending dismissal of the ineffective assistance claim.

After review of Petitioner's request to revisit, the Court finds the request should be denied. In issuing the Supplemental R&R, Judge Purcell clearly considered all 87 pages submitted by Petitioner. Judge Purcell also correctly noted that Petitioner's ineffective assistance claim must fail. Petitioner's claim argued his counsel was ineffective for failing to challenge the state court's jurisdiction on McGirt grounds. However, as Judge Purcell noted, the decision in McGirt v. Oklahoma, 591 U.S. ---, 140 S.Ct. 2452 (2020), came well after Petitioner's conviction was final. The Oklahoma Court of Criminal Appeals and the Tenth Circuit have held that McGirt is not retroactive. See Martinez v. State, 2021 OK CR 40, ¶ 26, 502 P.3d 1115, 1120 (Okla. Crim. App. 2021); In re Morgan, No. 20-6123 (10th Cir. Sept. 18, 2020). Consequently, even were the Court to revisit the Supplemental R&R in light of Petitioner's late-filed objection, the result would not change. Therefore, Petitioner's Motion will be denied.

For the reasons set forth more fully herein, Petitioner's Motion to Revisit and Readdress the Report and Recommendation (Dkt. No. 29) is DENIED.

IT IS SO ORDERED this 20th day of September 2022.



ROBIN J. CAUTHRON
United States District Judge